

WISCONSIN SUPREME COURT
Tuesday, October 7, 2008
11 a.m.

06AP1744-CR

State v. Jordan A. Denk

This is a certification from the Wisconsin Court of Appeals, District III (headquartered in Wausau). The Court of Appeals may certify cases that it believes cannot be resolved by applying current Wisconsin law. The Wisconsin Supreme Court, as the state's preeminent law-developing court, often accepts such certifications from the Court of Appeals. The case originated in Pepin County Circuit Court, Judge James J. Duvall presiding.

This case involves a police search. The Supreme Court is expected to determine whether police were acting lawfully when they seized an item that (1) was not inside the automobile that they were searching, and (2) belonged to a passenger who had not been arrested.

Here is the background: A police officer in Pepin County came upon a car parked alongside the road. The officer stopped to see if the motorists needed assistance. He also ran a license-plate check and discovered that the plates did not match the car they were on. When he approached the car to talk to the occupants, he smelled marijuana. He ordered the driver out of the car and searched him, turning up drug paraphernalia. The officer arrested the driver.

Jordan Denk was a passenger in a car. He exited the vehicle at the same time as the driver when ordered to do so by the officer. The officer noticed an eyeglass case lying on the ground next to the passenger door and Denk acknowledged that it was his. The officer asked Denk to retrieve it and Denk did so, placing it on the hood of the car. The officer opened the case and found drug paraphernalia. He then handcuffed Denk and searched him, discovering marijuana and methamphetamine.

Denk ultimately was charged with drug crimes and the circuit court denied his motion to suppress the evidence from the eyeglass case. The Court of Appeals certified this case (sent it directly, without issuing an opinion) to the Wisconsin Supreme Court. The Court is expected to decide if police may search the belongings of a passenger when that passenger has not been arrested, and when the belongings are outside of the vehicle.